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Supreme Court, U.S.
FILED
JUN 28 1996
OFFICE OF THE CLERK

No. 95-1930

In The

Supreme Court of the United States

October Term, 1995

GENERAL MOTORS CORPORATION,

Petitioner,

v.

CITY OF LINDEN, THE ASSESSOR OF LINDEN, AND RICHARD CHAIKEN, Agent, Servant or Employee of Linden,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of New Jersey

BRIEF IN OPPOSITION FOR RESPONDENTS CITY OF LINDEN AND ASSESSOR OF LINDEN

CARL GREENBERG, Counsel of Record
DONALD P. JACOBS and
VINCENT J. PROTO
On the Brief
BUDD LARNER GROSS ROSENBAUM
GREENBERG & SADE, P.C.
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
(201) 379-4800

SAUL A. WOLFE
Of Counsel
SKOLOFF & WOLFE
293 Eisenhower Parkway
Livingston, New Jersey 07039
(201) 992-0900

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the New Jersey Supreme Court was correct in concluding that, in light of the remedies available to aggrieved taxpayers under state law, dismissal of plaintiff's federal civil rights suit was required by *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 115 S. Ct. 2351 (1995).

TABLE OF CONTENTS

Page

COUNTERSTATEMENT OF QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

COUNTERSTATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 8

THE NEW JERSEY SUPREME COURT WAS CORRECT IN CONCLUDING THAT NEW JERSEY'S TAX SYSTEM PROVIDES AN ADEQUATE REMEDY FOR UNCONSTITUTIONAL TAX ASSESSMENTS AND THAT, THEREFORE, GM'S FEDERAL CIVIL RIGHTS CLAIMS ARE BARRED FROM NEW JERSEY'S COURTS BY *NATIONAL PRIVATE TRUCK COUNCIL*..... 8

CONCLUSION 23

TABLE OF AUTHORITIES

Page

FEDERAL CASES

California v. Grace Brethren Church, 457 U.S. 393 (1982) 14, 16, 22

City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981) 6

Fair Assessment in Real Estate Ass'n, Inc. v. McNary, 454 U.S. 100 (1981) 8, 9, 10, 12, 22

Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943) 14

McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 496 U.S. 18 (1990) 13, 15

National Private Truck Council, Inc. v. Oklahoma Tax Comm'n, 115 S. Ct. 2351 (1995) ..... *passim*

Rosewell v. LaSalle Nat'l Bank, 450 U.S. 503 (1981) 11, 13, 14

STATE CASES

Buckley Powder Co. v. Colorado, 1996 WL 97831 (Colo. App. Mar. 7, 1996), *reh'g denied* (Apr. 11, 1996) 13, 17

Ford Motor Co. v. Township of Edison, 127 N.J. 290, 604 A.2d 580 (1992) 5, 21

Garrett Group, L.P. v. County of Schuylkill, 667 A.2d 255 (Pa. Commw. 1995) 17

General Motors Corp. v. City of Linden, 12 N.J. Tax 24 (Tax Ct. 1991) 5

General Motors Corp. v. City of Linden, 13 N.J. Tax 324 (App. Div.), *certif. denied*, 134 N.J. 561, 636 A.2d 519 (1993) 5

TABLE OF AUTHORITIES – Continued

Page

General Motors Corp. v. City of Linden, 143 N.J. 336, 671 A.2d 560 (1996) ..... *passim*

General Motors Corp. v. City of Linden, 279 N.J. Super. 449, 653 A.2d 568 (App. Div. 1995) 7

Glen Wall Assocs. v. Township of Wall, 99 N.J. 265, 491 A.2d 1247 (1985) 21

Inwood Owner's, Inc. v. Township of Little Falls, 216 N.J. Super. 485, 524 A.2d 441 (App. Div.), *certif. denied*, 108 N.J. 184, 528 A.2d 13 (1987) 18

Jade Aircraft Sales, Inc. v. Crystal, 236 Conn. 701, 674 A.2d 834 (1996) 17

Kerr v. Waddell, 1996 WL 192001 (Ariz. App. Apr. 23, 1996) 12, 17

PPG Indus., Inc. v. Tracy, 74 Ohio St. 3d 449, 659 N.E.2d 1250 (1996) 17

Pantasote Co. v. City of Passaic, 100 N.J. 408, 495 A.2d 1308 (1985) 20

Sharp v. Direct Resources for Print, Inc., 910 S.W.2d 535 (Tex. App. 1995), *error denied* (Apr. 4, 1996) 17

Township of West Milford v. Van Decker, 120 N.J. 354, 576 A.2d 881 (1990).....19, 20, 21

Watnong Assocs., Inc. v. Township of Morris, 11 N.J. Tax 108 (Tax Ct. 1990)..... 21

Weisbrod v. Township of Springfield, 1 N.J. Tax 583 (Tax Ct. 1980) 19

TABLE OF AUTHORITIES – Continued

Page

CODES/STATUTES

28 U.S.C. § 1341 9
42 U.S.C. § 1983 ..... *passim*
N.J.S.A. 2A:3A-1 19
N.J.S.A. 2A:3A-3 19
N.J.S.A. 2B:13-1 19
N.J.S.A. 2B:13-3a 19
N.J.S.A. 2B:13-6 18
N.J.S.A. 54:1-35a 20
N.J.S.A. 54:3-2 18
N.J.S.A. 54:3-21 5
N.J.S.A. 54:3-27.2 4
N.J.S.A. 54:4-1.13 to 54:4-1.16 5
N.J.S.A. 54:4-63.1 to 54:4-63.11 1
N.J.S.A. 54:4-63.11 19
N.J.S.A. 54:51A-6 20

COUNTERSTATEMENT OF THE CASE

1. Petitioner General Motors Corporation (GM) owns a large automobile assembly plant in Linden, New Jersey. From August 1985 to August 1986, GM stopped production at the plant to transform it into one capable of producing "uni-body" automobiles, rather than "large chassis" automobiles that were previously produced. To do this, GM gutted the plant of its machinery and equipment, retooled the plant and added 200,000 square feet to the existing 2.2 million square-foot area. The cost of this modernization project was $350 million. Psa135-36, 203, 466.[1]

As a result of the project, the tax assessor for respondent City of Linden (the City) was required by statute to place an added assessment on the property reflecting the difference between the assessed value of the property before, and the fair assessable value after, its improvement. N.J.S.A. 54:4-63.1 to 54:4-63.11. An added assessment is imposed on an annualized basis and prorated for the existing tax year.

The City's tax assessor was respondent Emanuel Frangella. He had held that position for more than 20 years and was familiar with the GM plant as it existed prior to the $350 million modernization project. Because of the complexity of the project, however, Frangella

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[1] Citations to "Pa" refer to GM's appendix in the New Jersey Superior Court, Appellate Division. Citations to "Psa" refer to GM's supplemental appendix in the Appellate Division.

Because of a typographical error, the opinion of the New Jersey Supreme Court states that the cost of the reconstruction was $3.5 million rather than $350 million. 3a.

advised the City to retain respondent Richard Chaiken as an expert to assist in the analysis. Chaiken was a professional appraiser/tax consultant who had been involved in real estate appraisal since 1963. He was well-acquainted with GM's Linden plant, having performed analyses there for tax assessments in 1983, 1984 and 1985. Psa95, 97-98, 163, 218.

Contrary to the assertions of the Petition, the determination of the 1986 added assessment was not made on the basis of "highly irregular methodology" (Petition at 2) or without relevant data or analysis. Chaiken already had information in his computer in connection with the GM plant as a result of his inspections in previous years, and that information was used for purposes of the 1986 analysis. Chaiken was also familiar with other industrial and commercial real estate in the City. In addition, Frangella and Chaiken toured the reconstructed plant for a half day with representatives of GM. Psa97-98, 168.

After their tour of the plant, Frangella and Chaiken met to determine the amount of the added assessment. Chaiken concluded that the reconstruction had created a modern, state-of-the-art facility that was "virtually a new building." Psa172. Based upon his extensive experience, Chaiken knew that it would cost at least $55 to $60 per square foot to build a new industrial facility. *Id.* Therefore, Chaiken told Frangella that the reconstructed plant "was worth at least fifty-five to sixty dollars a square foot, and probably as much as one hundred [dollars] and upwards a square foot. . . . " Psa169. *See also* Psa98. In making this determination, Chaiken took into account his familiarity with the GM plant, obtained from his inspections during the previous years. Psa185.

Although Chaiken believed that the value of the plant may have exceeded $100 per square foot because of the plant's "many, many special features," he advised Frangella to use the minimum figure of $55 to $60 per square foot, which was appropriate for "a basic shell good grade industrial facility in New Jersey." Psa172-73. Frangella followed Chaiken's advice, even though he believed that an added assessment of $55 to $60 per square foot was "a very conservative estimate." Psa98. *See also* Psa1063. Accordingly, Frangella imposed an added assessment of $17,690,000, prorated to $5,896,667 for the 1986 tax year. Psa99.

In a December 8, 1986 letter report to Frangella, Chaiken set forth the methodology he employed. Chaiken estimated that a 2.2 million square-foot facility would cost between $55 and $100 per square foot to build – "perhaps even more when we consider all the special features built-into this facility." Psa213. This analysis did not take into account the 200,000 square feet that had been added to the plant during the reconstruction. Psa98, 212-13. Chaiken computed the added assessment as follows:

	[At $55 per sq. ft.		At $100 per sq. ft.]
IMPROVEMENTS:	$121,000,000	to	$220,000,000
SITE IMPVTS:	7,500,000	to	15,000,000
	$128,500,000	to	$235,000,000
ACCRUED DEP:	15,250,000	to	25,000,000
DEPRECIATED VALUE:	$113,250,000	to	$210,000,000
ASSMTS @57.76% =	$ 65,413,200	to	$121,296,000
LESS ASSMTS:	44,526,200	to	44,526,200
ADDED ASSMTS:	20,887,000	to	76,769,800

Psa213.

In his report, Chaiken stated in italics: "*The ADDED ASSESSMENT should have been no less than $20,887,000,*" rather than the $17,690,000 that had been imposed. Psa213 (emphasis in original). Chaiken advised Frangella that "[w]e must have used the wrong ratio in our earlier calculations . . . or made some other sort of math error." Psa213. The error was in GM's favor and was never corrected.

2. GM appealed the 1986 added assessment to the Union County Board of Taxation (County Board). At the hearing before the County Board, GM valued the plant – which had been reconstructed at a cost of $350 million – at only $20 million for tax purposes because "[t]he majority of that three hundred million applies to machinery and equipment." Psa152. GM maintained that most of the improvements to the plant constituted "nontaxable personal property," as opposed to "real property improvements." Psa494. On that basis, GM sought to reduce the added assessment from $17,690,000 to $100,000, with a corresponding reduction in the prorated portion of the added assessment from $5,896,667 to $33,333. Psa1056. After hearing extensive testimony, the County Board upheld the added assessment. Psa938.

GM appealed that judgment to the Tax Court of New Jersey, where the matter has been consolidated with subsequent GM appeals and is still pending. If GM loses in the Tax Court, it can appeal to the New Jersey Superior Court, Appellate Division. If GM prevails on appeal, it will receive, within 60 days of the final judgment, a full refund of any excess tax paid plus 5% interest. N.J.S.A. 54:3-27.2.

GM had also filed appeals, pursuant to N.J.S.A. 54:3-21, with respect to taxes imposed for 1983, 1984 and 1985. After a 40-day trial, those assessments were not only upheld but increased by the Tax Court in 1991. *General Motors Corp. v. City of Linden*, 13 N.J. Tax 324, 325 (App. Div.) (per curiam), *certif. denied*, 134 N.J. 561, 636 A.2d 519 (1993); *General Motors Corp. v. City of Linden*, 12 N.J. Tax 24 (Tax Ct. 1991). In its Petition, GM claims that its "position was vindicated on appeal when the Appellate Division . . . reversed the Tax Court decision and remanded for reconsideration" (Petition at 2), but that statement is highly misleading.[2]

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[2] While GM's appeal of the 1983-1985 taxes was pending in the Appellate Division, two significant developments occurred: (1) the New Jersey Supreme Court issued a decision – *Ford Motor Co. v. Township of Edison*, 127 N.J. 290, 604 A.2d 580 (1992) – that overturned a "basic predicate" of the Tax Court's decision; and (2) the New Jersey Legislature enacted the Business Retention Act, N.J.S.A. 54:4-1.13 to 54:4-1.16, which rejected certain Tax Court decisions that had broadly interpreted the definition of real property under New Jersey's tax laws. *General Motors Corp. v. City of Linden*, 13 N.J. Tax at 325-29. Because these developments occurred after the Tax Court's decision in the GM matters and "seriously undermined the conceptual basis of the Tax Court's reasoning," the Appellate Division reversed the Tax Court's decision regarding the 1983, 1984 and 1985 assessments and remanded for reconsideration in light of the new decision and the new statute. *Id.* at 325.

Contrary to the implication of the Petition, the Appellate Division did not consider the ultimate issue of the propriety of the 1983, 1984 and 1985 assessments. In fact, GM and the City are still litigating that issue, and those cases have been consolidated with GM's appeals of the tax assessments for each year from 1986 through 1994. Early this year, the Tax Court, on

3. On October 1, 1987, while its appeal of the 1986 added assessment was pending before the County Board, GM filed suit in the New Jersey Superior Court, Law Division, against the City, the City's tax assessor (unidentified by name) and Chaiken. Relying upon 42 U.S.C. §1983, GM claimed that defendants violated its constitutional rights because the 1986 added assessment was allegedly "discriminatory, arbitrary, capricious and unconstitutional." Pa2. Contrary to the implication of the Petition, GM did not allege that the 1986 added assessment was imposed in retaliation for GM's filing of tax appeals in previous years.

GM thereafter filed a three-count amended complaint in which it added new claims, primarily against Chaiken. Pa15. Most notably, the third count demanded an award of punitive damages against Chaiken; GM has never demanded punitive damages from Frangella or the City.[3] *Compare* Pa17 & Pa18 *with* Pa19. Moreover, as was the case with the original complaint, the amended complaint did not allege a retaliatory motive.

It was not until 1990, in opposition to defendants' motion for summary judgment, that GM asserted that the 1986 added assessment was imposed in retaliation for

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remand from the Appellate Division, granted partial summary judgment in favor of the City, declaring unconstitutional (under the New Jersey Constitution) a portion of the Business Retention Act. *General Motors Corp. v. City of Linden*, Nos. 20-09091A2-83D etc. (N.J. Tax Ct. Jan. 4, 1996).

[3] There can be no § 1983 recovery of punitive damages against a municipality. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

GM's filing of tax appeals in previous years. Contrary to GM's statements in the Petition, the City's mayor did not provide support for this assertion by "stat[ing] (with astonishing candor) that '[t]he additional increased assessment was placed on General Motors' plant because [GM] filed the tax appeal.' " Petition at 2. Rather, two GM employees stated in affidavits that the mayor had made such a statement at a meeting in 1989. Psa564-65; 566-67. The mayor submitted a responsive affidavit denying that he made any such statement. Psa1115-16. Frangella and another person present at the meeting agreed with the mayor. Psa1113-14; 1117-18.

The Superior Court of New Jersey, Law Division, entered summary judgment in favor of all three defendants. 31a-56a. The Superior Court of New Jersey, Appellate Division, reversed in material part. *General Motors Corp. v. City of Linden*, 279 N.J. Super. 449, 653 A.2d 568 (App. Div. 1995); 14a-30a. The New Jersey Supreme Court, in a unanimous opinion, reversed the decision of the Appellate Division and remanded the matter to the Law Division for entry of a judgment of dismissal. *General Motors Corp. v. City of Linden*, 143 N.J. 336, 671 A.2d 560 (1996); 1a-13a.

4. In its opinion, the New Jersey Supreme Court held that GM's lawsuit, which sought relief under 42 U.S.C. §1983 for the allegedly unconstitutional added assessment, failed to assert a viable cause of action. The court concluded that New Jersey's tax system provides an adequate remedy for unconstitutional tax assessments. 11a-12a. Because the remedy is adequate for constitutional purposes, the court applied *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 115 S. Ct. 2351

(1995), and concluded that claims involving state tax administration are not actionable under §1983 in New Jersey courts. 2a-3a, 5a-7a.

REASONS FOR DENYING THE WRIT

THE NEW JERSEY SUPREME COURT WAS CORRECT IN CONCLUDING THAT NEW JERSEY'S TAX SYSTEM PROVIDES AN ADEQUATE REMEDY FOR UNCONSTITUTIONAL TAX ASSESSMENTS AND THAT, THEREFORE, GM'S FEDERAL CIVIL RIGHTS CLAIMS ARE BARRED FROM NEW JERSEY'S COURTS BY *NATIONAL PRIVATE TRUCK COUNCIL.*

In *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 115 S. Ct. 2351, 2354 (1995), the issue was "whether, in tax cases, state courts must provide relief under §1983 when adequate remedies exist under state law." The Court answered the question "no," at least insofar as the requested §1983 relief is of a declaratory or injunctive nature: "When a litigant seeks declaratory or injunctive relief against a state tax pursuant to §1983, . . . state courts, like their federal counterparts, must refrain from granting federal relief under §1983 when there is an adequate legal remedy." *Id.* at 2357.

The Court thus extended to state courts the reasoning of *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100 (1981). In *Fair Assessment*, plaintiffs sought to recover, under §1983, actual damages in the amount of overassessments and punitive damages of $75,000 from each defendant. 454 U.S. at 106. The Court held that "Congress never authorized federal courts to entertain damages actions under §1983 against state taxes when

state law furnishes an adequate legal remedy." *National Private Truck Council*, 115 S. Ct. at 2354-55 (describing the holding in *Fair Assessment*). The Court in *Fair Assessment* concluded that excluding tax-related §1983 damages actions from federal court is necessary to prevent severe disruption of state tax systems:

> In addition to the intrusiveness of the judgment, the very maintenance of the suit itself would intrude on the enforcement of the state scheme. As the District Court in [*Fair Assessment*] stated:
>
> > "To allow such suits would cause disruption of the states' revenue collection systems *equal to that caused by anticipatory relief.* State tax collection officials could be summoned into federal court to defend their assessments against claims for refunds as well as prayers for punitive damages, merely on the assertion that the tax collected was willfully and maliciously discriminatory against a certain type of property."

Fair Assessment, 454 U.S. at 114 (quoting *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 478 F. Supp. 1231, 1233-34 (E.D. Mo. 1979)) (emphasis added).

Referring to the Tax Injunction Act and the principles that underlie that statute,[4] the Court stated:

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[4] The Tax Injunction Act provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

28 U.S.C. § 1341.

> The statute "has its root in equity practice, in principles of federalism, and in recognition of the imperative need of a State to administer its own fiscal operations." This last consideration was the principal motivating force behind the Act: this legislation was first and foremost a vehicle to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes.

Fair Assessment, 454 U.S. at 110 (citations omitted).

The Court further explained:

> We discern no significant difference, for purposes of the principles recognized in this case, between remedies which are 'plain, adequate, and complete,' as that phrase has been used in articulating the doctrine of equitable restraint, and those which are 'plain, speedy and efficient,' within the meaning of §1341 [i.e., the Tax Injunction Act].

Fair Assessment, 454 U.S. at 186 n.8.

The Court in *National Private Truck Council* found the decision in *Fair Assessment* to be "[o]f particular relevance" even though the §1983 action in *Fair Assessment* included claims for damages while the §1983 action in *National Private Truck Council* did not. 115 S. Ct. at 2354. The Court noted that the exclusion of tax-related §1983 actions from *federal* court applies not only to actions for declaratory or injunctive relief but also to actions for compensatory and punitive damages. 115 S. Ct. at 2354-55. The Court then explained:

> Just as *Fair Assessment* relied upon a background principle in interpreting §1983 to preclude damage actions in tax cases brought in federal court, so we rely on the same principle in interpreting

> §1983 to provide no basis for courts to award injunctive relief when an adequate legal remedy exists. Our interpretation is supported not only by the background principle of federal noninterference discussed in *Fair Assessment*, but also by the principles of equitable restraint discussed at length in that case. *Whether a suit is brought in federal or state court, Congress simply did not authorize the disruption of state tax administration in this way.*

115 S. Ct. at 2356 (emphasis added) (citation omitted).

Thus, contrary to GM's approach, the application of *National Private Truck Council* does not require a mechanical comparison of the remedies sought by the plaintiffs in that case with the remedies sought by GM in its New Jersey state court action. *See* Petition at 11, 14-19. What is required is an application of the Court's holding that §1983 cannot be permitted to disrupt a state's tax system unless that system fails to provide an aggrieved taxpayer with an adequate legal remedy.

To be "adequate," a state-court remedy must merely meet "certain minimal *procedural* criteria." *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 512 (1981) (emphasis by Court). These criteria are satisfied if a state-court refund procedure "provides the taxpayer with a 'full hearing and judicial determination' at which he may raise any and all constitutional objections to the tax." *Id.* at 514 (quoting *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 324, 312 N.E.2d 252, 255-56 (1974)). *See also id.* at 515 n.19.

The New Jersey Supreme Court applied this precedent and correctly concluded that New Jersey's tax system provides an adequate remedy for unconstitutional

tax assessments. 9a-12a. Contrary to GM's argument (Petition at 8), the court did not evaluate the adequacy of the remedy "solely" on the availability of a refund. Rather, the court first noted that the "minimal procedural criteria" are satisfied because "New Jersey law provides several opportunities for taxpayers to raise constitutional objections to an added assessment." 11a. The taxpayer may challenge the added assessment before the applicable county board of taxation and on appeal to the Tax Court and beyond. 11a-12a. If the taxpayer ultimately prevails on its claim that the added assessment was excessive, it is entitled to a full refund plus 5% interest. 12a (citing N.J.S.A. 54:3-27.2).

The §1983 remedies sought by GM (compensatory and punitive damages) are the *same* as those which were sought by the plaintiffs in *Fair Assessment*. It is clear from the Court's reliance on *Fair Assessment* in *National Private Truck Council* – a case that did *not* involve those remedies – that *Fair Assessment* directs the result in the present case, which *does* involve those remedies. Thus, to paraphrase *National Private Truck Council*, when a litigant seeks damages against a state tax pursuant to §1983, state courts, like their federal counterparts, must refrain from granting federal relief under §1983 when there is an adequate legal remedy. *See National Private Truck Council*, 115 S. Ct. at 2357. *See also Kerr v. Waddell*, 1996 WL 192001 (Ariz. App. Apr. 23, 1996) at * 5 ("Although *National Private Truck Council* did not specifically address whether courts could award damages under §1983 in state tax cases, we interpret it to forbid an award of damages for the same reasons that injunctive and declaratory relief are

forbidden") (footnote omitted); *Buckley Powder Co. v. Colorado*, 1996 WL 97831 (Colo. App. Mar. 7, 1996), *reh'g denied* (Apr. 11, 1996), at * 6 (*National Private Truck Council*'s citation to *Fair Assessment* means, by implication, that state courts cannot entertain §1983 claims for monetary relief if state tax procedure provides an adequate remedy).

Furthermore, as the New Jersey Supreme Court recognized (10a-11a), the refund-plus-interest remedy is adequate substantively even though it is not identical to the relief that would be available under §1983. "[T]he States are afforded great flexibility in satisfying the requirements of due process in the field of taxation. As long as state law provides a 'clear and certain remedy,' the States may determine whether to provide predeprivation process (e.g., an injunction) or instead to afford postdeprivation relief (e.g., a refund)." *National Private Truck Council*, 115 S. Ct. at 2354 (quoting *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, 36-37, 51 (1990)).

In *Rosewell* – a §1983 case – the state system provided for refunds *without* interest. The Court nevertheless found that remedy to be adequate, noting that when Congress passed the Tax Injunction Act, it

> knew that state tax systems commonly provided for payment of taxes under protest with subsequent refund as their exclusive remedy. . . .
>
> It is only common sense to presume that Congress was also aware that some of these same States did not pay interest on their refunds to taxpayers, following the then-familiar rule that

> interest in refund actions was recoverable only when expressly allowed by statute.

Rosewell, 450 U.S. at 523.

By providing a refund *plus interest*, the New Jersey system "is more favorable to the taxpayer" than the system that was found to be adequate in *Rosewell*. *California v. Grace Brethren Church*, 457 U.S. 393, 414 n.31 (1982). Obviously, therefore, the refund-plus-interest remedy is adequate. *Id.* at 417 (finding the refund-plus-interest remedy under California law to be adequate and holding that the federal district court "had no jurisdiction to issue injunctive or declaratory relief"). *See also National Private Truck Council*, 115 S. Ct. at 2355 (plaintiff *conceded* that the state had offered "an adequate remedy in the form of refunds").

The Court has long recognized that a refund is an adequate remedy, the availability of which requires *federal* courts to dismiss tax-related §1983 actions. In *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943), the Court relied upon the "spirit" of the Tax Injunction Act to bar federal declaratory judgment actions regarding the constitutionality of state taxes. *National Private Truck Council*, 115 S. Ct. at 2354. The *Great Lakes* Court held that because a refund is an adequate remedy, such actions must be dismissed on the basis of federalism, comity and equitable restraint:

> With due regard for these considerations, it is the [federal] court's duty to withhold such relief when, as in the present case, it appears that the state legislature has provided that on payment of any challenged tax to the appropriate state officer, the taxpayer may maintain a suit to

> recover it back. In such a suit he may assert his federal rights and secure a review of them by this Court. This affords an adequate remedy to the taxpayer, and at the same time leaves undisturbed the state's administration of its taxes.

319 U.S. at 300-01.

In *McKesson*, the Court again held that a refund is an adequate remedy:

> If a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation.
>
> * * *
>
> [The State] may satisfy this obligation through any form of relief, *ranging from a refund of the excess taxes paid* by petitioner to an offsetting charge to previously favored [taxpayers]. . . . The State is free to choose which form of relief it will provide, so long as that relief satisfies the minimum federal requirements we have outlined.

McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 496 U.S. 18, 31, 51-52 (1990) (footnotes omitted) (emphasis added).

The adequacy of a refund as a legal remedy is also evident from the Court's opinion in *National Private Truck*

Council. The Court indicated that "there may be extraordinary circumstances under which injunctive or declaratory relief is available even when a legal remedy exists." 115 S. Ct. at 2357 n.6. The Court then described one such "extraordinary circumstance":

> Thus, if a state court awards a refund to a taxpayer on the ground that the tax violates the Federal Constitution, but state tax authorities continue to impose the unconstitutional tax, injunctive and declaratory relief might then be appropriate. In such circumstances, the remedy might be thought to be "inadequate."

Id. The clear implication of the Court's hypothetical is that a refund is an adequate legal remedy unless a state's tax authorities continue to impose the unconstitutional tax – in which case the remedy might need to be supplemented by injunctive and declaratory relief.

Furthermore, as the New Jersey Supreme Court recognized, "courts should construe narrowly the exception to the requirements of an adequate remedy." 9a (citing *California v. Grace Brethren Church*, 457 U.S. at 413). The reason underlying the need for a narrow construction of that exception is, again, the need to "be faithful to the congressional intent to 'limit drastically' " judicial interference with state tax systems. *California v. Grace Brethren Church*, 457 U.S. at 412-13.

The Court's decision in *National Private Truck Council* has uniformly been interpreted to mean that a refund-plus-interest remedy is adequate for constitutional purposes and, consequently, that state courts cannot entertain §1983 actions in tax matters where such a remedy is available. Like the New Jersey Supreme Court, other state

courts have given life to the affirmation that "[t]he States are afforded great flexibility in satisfying the requirements of due process in the field of taxation." *National Private Truck Council*, 115 S. Ct. at 2354. *See Jade Aircraft Sales, Inc. v. Crystal*, 236 Conn. 701, 708-09, 674 A.2d 834, 838 (1996) (although remedy provided by Connecticut's tax system does not allow for monetary damages or attorney's fees and provides only one month within which to appeal a tax assessment, the refund-plus-interest remedy is adequate); *PPG Indus., Inc. v. Tracy*, 74 Ohio St. 3d 449, 452, 659 N.E.2d 1250, 1252 (1996) (per curiam) (because Ohio's tax system provides an appellate procedure to determine constitutional claims, there is an "adequate remedy at law" and thus no right to receive attorney's fees under 42 U.S.C. §1988); *Kerr v. Waddell*, 1996 WL 192001 (Ariz. App. Apr. 23, 1996) at * 1 (vacating previous opinion in light of *National Private Truck Council* and holding that "[b]ecause Arizona's administrative tax procedure is an adequate legal remedy that was not exhausted in this case, . . . the trial court lacked subject matter jurisdiction to hear these claims"); *Buckley Powder Co. v. Colorado*, 1996 WL 97831 (Colo. App. Mar. 7, 1996), *reh'g denied* (Apr. 11, 1996), at * 6 (Colorado's tax system provides adequate remedies because it provides for declaratory and injunctive relief and administrative remedies including refunds). *See also Garrett Group, L.P. v. County of Schuylkill*, 667 A.2d 255, 257 n.5 (Pa. Commw. 1995) (noting taxpayers' voluntary dismissal at oral argument of their §1983 claims in view of *National Private Truck Council*); *Sharp v. Direct Resources for Print, Inc.*, 910 S.W.2d 535, 541 (Tex. App. 1995), *error denied* (Apr. 4,

1996) (noting taxpayer's recognition that refund was an adequate remedy).

GM suggests that, in any event, the New Jersey procedures do not give taxpayers an adequate opportunity to obtain refund-plus-interest relief. According to GM, the grant or denial of relief is entrusted to inferior tribunals of limited jurisdiction, assessments can be challenged only if they are well in excess of taxable value, and unconstitutional assessments enjoy a strong presumption of correctness. Nothing could be further from the truth.

New Jersey's county boards of taxation are independent, quasi-judicial entities whose members are appointed by the Governor and confirmed by the State Senate. Members of the county boards of taxation are chosen "because of their special qualifications, knowledge and experience in matters concerning the valuation and taxation of property, particularly of real property." N.J.S.A. 54:3-2. Similarly, the Tax Court of New Jersey is a statewide court whose members are appointed by the Governor and confirmed by the State Senate. Its judges have the same tenure of office as judges of the Superior Court and are required to be chosen "for their special qualifications, knowledge and experience in matters of taxation." N.J.S.A. 2B:13-6.

Moreover, New Jersey's added assessment procedure is unusually favorable to the taxpayer because there is no requirement that an added assessment be paid before it can be challenged on appeal to the county board of taxation. *Inwood Owner's, Inc. v. Township of Little Falls*, 216 N.J. Super. 485, 488-90, 524 A.2d 441, 443-44 (App.

Div.), *certif. denied*, 108 N.J. 184, 528 A.2d 13 (1987). Furthermore, a taxpayer challenging an added assessment must receive a decision from the county board of taxation within 30 days of the deadline for filing the appeal. *See* N.J.S.A. 54:4-63.11.

Contrary to the Petition, the Tax Court is not " 'an inferior court of limited jurisdiction' (N.J.S.A. 2A:3A-3), which is restricted in the claims it may entertain and in the relief it may provide." Petition at 3. The applicable statutory section (N.J.S.A. 2A:3A-1, not 2A:3A-3) was repealed in 1993 and replaced with N.J.S.A. 2B:13-1, which deleted the word "inferior." Even before that deletion, it was settled that the Tax Court could remedy constitutional deprivations. 11a (even before a recent amendment to the statute, which expanded the Tax Court's jurisdiction to hear any tax-related matters over which the Superior Court would have jurisdiction, the Tax Court could correct an unconstitutional assessment); *Township of West Milford v. Van Decker*, 120 N.J. 354, 361-63, 576 A.2d 881, 885-86 (1990) (plaintiffs successfully challenged imposition of property tax on federal equal protection grounds); *Weisbrod v. Township of Springfield*, 1 N.J. Tax 583, 587-88 (Tax Ct. 1980) (use of "inferior" did not affect ability of Tax Court to pass on constitutional questions). *See also* N.J.S.A. 2B:13-3a ("The Tax Court, in all causes within its jurisdiction, and subject to law, may grant legal and equitable relief so that all matters in controversy between the parties may be completely determined").

Nor does the statutory "zone of reasonableness" deprive taxpayers of relief from an unconstitutional method of valuation if the assessments do not exceed the

taxable value of their properties by more than 15%. *See* Petition at 4-5. The Tax Court's utilization of the zone of reasonableness is prescribed by N.J.S.A. 54:51A-6, concerning which the New Jersey Supreme Court has stated, in unequivocal terms:

> [I]t is axiomatic that no statute can sanction an unconstitutional practice. Accordingly, the Township's reliance on the "protective range" of Chapter 123, N.J.S.A. 54:51A-6, to permit its discriminatory-assessment practice is without merit.
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> * * *
>
> No statute can overturn the New Jersey Constitution's guarantee to its citizens that real estate "shall be assessed according to the same standard of value" or deny a citizen equal protection under the fourteenth amendment. If there is a conflict between the constitutional and statutory standards, this Court has held unequivocally that the constitutional guarantee of equality must prevail.

Township of West Milford v. Van Decker, 120 N.J. at 357, 364, 576 A.2d at 882, 886. *See also* N.J.S.A. 54:1-35a (defining terms).

For these same reasons, the presumption of correctness that applies to tax assessments when they are challenged on appeal does not absolve the Tax Court of an obligation to make its own determination of a property's true value. No presumption of correctness applies if the assessment was "derived from a patently arbitrary and capricious assessment methodology" or if it was "totally unrelated to true value." *Pantasote Co. v. City of Passaic*,

100 N.J. 408, 417, 495 A.2d 1308, 1312 (1985); *Watnong Assocs., Inc. v. Township of Morris*, 11 N.J. Tax 108, 117-18 (Tax Ct. 1990). Moreover, the New Jersey Supreme Court has made clear that the Tax Court should not treat the presumption of correctness as an insurmountable barrier. *See Glen Wall Assocs. v. Township of Wall*, 99 N.J. 265, 273-84, 491 A.2d 1247, 1251-57 (1985). *See also Ford Motor Co. v. Township of Edison*, 127 N.J. 290, 310-16, 604 A.2d 580, 590-93 (1990). Finally, for the same reasons as apply to the application of the zone of reasonableness, the presumption of correctness is not and cannot be used to sustain unconstitutional actions. *See Township of West Milford v. Van Decker*, 120 N.J. at 357, 364, 576 A.2d at 882, 886.

In the same vein, GM repeatedly raises the possibility that dismissal of §1983 claims from state court will create a risk that certain constitutional violations, such as invidious race discrimination, will go unpunished. Petition at 4-5, 9, 14. The easiest response to this argument is that this is not such a case. The New Jersey Supreme Court stated:

> We need not reach the question whether discrimination, based on race, religion, gender, or the like, could constitute a violation of a taxpayer's constitutional rights. The issue is not before us. Suffice it to state that we do not read the decisions of the United States Supreme Court as legitimizing any form of invidious discrimination. Furthermore, the Law Against Discrimination, N.J.S.A. 10:5-1 to 5-42, assures New Jersey citizens protection against any such discrimination.

12a. *See also Fair Assessment*, 454 U.S. at 107 n.4 ("We need not decide in this case whether the comity spoken of would also bar a claim under §1983 which requires no scrutiny whatever of state tax assessment practices, such as a facial attack on tax laws colorably claimed to be discriminatory as to race").

As the New Jersey Supreme Court recognized, New Jersey's Law Against Discrimination provides a direct and complete remedy for invidious racial discrimination. 12a. Moreover, if such discrimination were to occur, it could be challenged through New Jersey's tax system, a refund plus interest would be awarded, and "there is every reason to believe that once a [New Jersey] state appellate court has declared the tax unconstitutional the appropriate state agencies will respect that declaration." *California v. Grace Brethren Church*, 457 U.S. at 414. *See National Private Truck Council*, 115 S. Ct. at 2357 n.6. If the discriminatory conduct were repeated, then and only then might relief be appropriate under §1983. *See National Private Truck Council*, 115 S. Ct. at n.6.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be denied.

Respectfully submitted,

CARL GREENBERG
Counsel of Record
DONALD P. JACOBS
VINCENT J. PROTO
On the Brief
Attorneys for Respondents
City of Linden and
Tax Assessor of Linden
BUDD LARNER GROSS ROSENBAUM
GREENBERG & SADE, P.C.
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078

SAUL A. WOLFE
Of Counsel
SKOLOFF & WOLFE
293 Eisenhower Parkway
Livingston, New Jersey 07039